

## § 824.12

## 10 CFR Ch. III (1–1–12 Edition)

(d) Be accompanied, represented and advised by counsel of the person's choosing.

### § 824.12 Conduct of the hearing.

(a) DOE shall make a transcript of the hearing;

(b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;

(c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(e) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

### § 824.13 Initial decision.

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If

the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

(1) The nature, circumstances, extent, and gravity of the violation or violations;

(2) The violator's ability to pay;

(3) The effect of the civil penalty on the person's ability to do business;

(4) Any history of prior violations;

(5) The degree of culpability; and

(6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE 30 days after the filing of the initial decision unless the Secretary files a Notice of Review. If the Secretary files a notice of Notice of Review, he shall file a final order as soon as practicable after completing his review. The Secretary, at his discretion, may order additional proceedings, remand the matter, or modify the amount of the civil penalty assessed in the initial decision. DOE shall notify the person of the Secretary's action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final order shall pay the full amount of the civil penalty assessed in the final order within thirty days (30) unless otherwise agreed by the Director.

### § 824.14 Special procedures.

A person receiving a final notice of violation under § 824.7 may elect in writing, within 30 days of receipt of such notice, the application of special procedures regarding payment of the penalty set forth in section 234A.c.(3) of the Act, 42 U.S.C. 2282a(c)(3). The Director shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the DOE shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty.